

E-Filed 9/26/08

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

ROMULO RIMANDO,

Plaintiff,

v.

ALUM ROCK UNION ELEMENTARY
SCHOOL DISTRICT and
MARIBEL GUIZAR-MAITA, individually,

Defendants.

Case Number C 08-1874 JF (RS)

ORDER¹ GRANTING MOTION TO
DISMISS

[re: doc. no. 8]

Plaintiff Romulo Rimando alleges violations of the Uniformed Services Employment and Reemployment Rights Act ("USERRA") by his former employer, Defendant Alum Rock Union Elementary School District ("Alum Rock"), and a coworker, Defendant Maribel Guizar-Maita ("Guizar-Maita"). Defendants move to dismiss the instant action pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction and pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted. Because determination of the issues presented

¹ This disposition is not designated for publication in the official reports.

1 by the motion is controlled by the Ninth Circuit's recent decision in *Townsend v. Univ. of Alaska*,
2 No. 07-35993, 2008 WL 4093608 (9th Cir. Sept. 5, 2008), the motion will be granted.

3 4 **I. BACKGROUND**

5 Plaintiff is a Sergeant First Class in the United States Army Reserve. He formerly was
6 employed by Alum Rock from October 30, 1995 until August 9, 2007. He was promoted to
7 Telecommunications Supervisor in 1997 and held this position until his termination in August
8 2007.

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10 Between February 14, 2007 and June 14, 2007, Plaintiff was on active military duty and
11 thus was absent from his employment with Alum Rock. Plaintiff's supervisors were aware of his
12 active duty status. After his active duty period, Plaintiff returned to reserve status and was
13 reemployed by Alum Rock. However, Alum Rock terminated Plaintiff approximately six weeks
14 later. Plaintiff alleges that his termination, which occurred less than 180 days after his
15 reemployment start date, violated certain provisions of USERRA and the California Military and
16 Veterans' Code. Plaintiff also has accused Guizar-Maita "individually" of violating these same
17 statutes. Guizar-Maita allegedly made disparaging remarks about Plaintiff's military obligations
18 and recommended Plaintiff's termination to supervisors at Alum Rock.

19 20 **II. DISCUSSION**

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22 When considering a motion to dismiss, the plaintiff's allegations are taken as true, and the
23 Court must construe the complaint in the light most favorable to the plaintiff. *Jenkins v.*
24 *McKeithen*, 395 U.S. 411, 421 (1969). Leave to amend must be granted unless it is clear that the
25 complaint's deficiencies cannot be cured by amendment. *Lucas v. Dep't of Corrs.*, 66 F.3d 245,
26 248 (9th Cir. 1995). When amendment would be futile, however, dismissal may be ordered with
27 prejudice. *Dumas v. Kipp*, 90 F.3d 386, 393 (9th Cir. 1996).
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1 USERRA “forbids employment discrimination on the basis of membership in the armed
2 forces.” *Townsend*, 2008 WL 4093608, at *2. Defendants argue that the Court lacks subject
3 matter jurisdiction because state courts have exclusive jurisdiction over claims brought under
4 USERRA by an individual against a state or state entity. Prior to 1998, USERRA conferred
5 exclusive jurisdiction upon federal courts for all claims brought under the statute. *See Townsend*,
6 2008 WL 4093608, at *2. In 1998, however, Congress amended USERRA’s jurisdictional
7 provisions to allow certain disputes to be heard in state court. *Id.* As amended, the relevant
8 section now states “[i]n the case of an action against a State (as an employer) by a person, the
9 action *may* be brought in a State court of competent jurisdiction in accordance with the laws of
10 the State.” 38 U.S.C. § 4323(b)(2) (emphasis added).

13 While this apparently permissive statutory language appears to grant a plaintiff the option
14 of bringing suit in state or federal court, decisions subsequent to the 1998 amendment have held
15 that the 1998 amendment *removed* federal jurisdiction over USERRA claims brought by an
16 individual against a state. *See Townsend*, 2008 WL 4093608, at *5; *McIntosh v. Partridge*, No.
17 07-20440, 2008 WL 3198250 (5th Cir. Aug. 8, 2008); *Velasquez v. Frapwell*, 165 F.3d 593, 593-
18 94 (7th Cir. 1999); *Valadez v. Regents of Univ. of Cal.*, No. CV-03-0433, 2005 WL 1541086
19 (E.D. Cal. June 29, 2005). After carefully considering the amendment’s legislative history,
20 courts have concluded that Congress intended to preserve sovereign immunity under the Eleventh
21 Amendment, which “bars federal jurisdiction over suits against an unconsenting state by its own
22 citizens.” *Townsend*, 2008 WL 4093608, at *3. This Court is bound by the Ninth Circuit’s
23 holding in *Townsend* that a USERRA action brought by an individual against a state entity must
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1 be brought in state court.² Thus, the only remaining issues are whether Alum Rock is a state
2 entity and whether USERRA supports an individual claim against Guizar-Maita.

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4 A. Alum Rock

5 Plaintiff argues that even if a suit by an individual against a state must be brought in state
6 court, the present litigation still should be heard in federal court because Alum Rock is not a state
7 entity for USERRA purposes. In support of this proposition, Plaintiff cites *Carpenter v. Tyler*
8 *Indep. Sch. Dist.*, 429 F. Supp. 2d 848 (E.D. Tex. 2006) and *Smith v. Sch. Bd. of Polk County*,
9 205 F. Supp. 2d 1308 (M.D. Fla. 2002), both of which allowed USERRA suits against school
10 districts to proceed in federal court. Under Texas and Florida state law, however, school districts
11 are not considered to be state entities entitled to Eleventh Amendment immunity. *See, e.g.*,
12 *Travelers Indem. Co. v. Sch. Bd. of Dade County, Fla.*, 666 F.2d 505, 507 (“We begin with the
13 basic proposition that ordinarily boards of education in Florida are not qua boards of education
14 protected from suit by the Eleventh Amendment.”); *Rascon v. Austin I.S.D.*, A-05-CA-1072,
15 2006 WL 2045733, at *3 n.2 (W.D. Tex. July 18, 2006) (“[A]n independent school district is
16 more like a city or county than it is like an arm of the State of Texas’..... Thus, the Court does not
17 apply an Eleventh Amendment framework in analyzing an independent school district’s
18 immunity from suit in federal court.”) (citation omitted).

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21 In contrast, it is well settled under California law that California school districts *are* arms
22 of the state and thus are treated as states for Eleventh Amendment purposes. In *Belanger v.*
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25 ² Plaintiff also argues that if the Court were to allow the suit to be heard in federal court,
26 Defendants would be stripped of sovereign immunity under *Cent. Virginia Cmty. Coll. v. Katz*,
27 546 U.S. 356 (2006). However, *Katz* is limited to certain bankruptcy proceedings and otherwise
28 does not abrogate the states’ Eleventh Amendment immunity. *See id.* at 378; *St. Charles County,*
Mo. v. Wisconsin, 447 F.3d 1055, 1058 n.4 (8th Cir. 2006) (“The [*Katz*] Court indicated that this
exception for bankruptcy cases is a narrow one.... Because this is not a bankruptcy case, this
narrow exception does not apply.”).

1 *Madera Unified Sch. Dist.*, 963 F.2d 248 (9th Cir. 1992), the Ninth Circuit held that California
2 school districts are state entities for purposes of the Eleventh Amendment. *Belanger* noted that
3 in contrast to the law in many other states, “California law treats public schooling as a statewide
4 or central governmental function.” *Id.* at 253. For example, the primary source of funding for
5 school districts comes from the state, not local municipalities. *Id.* at 251-52. Moreover, the
6 principal that “California public schools have long been treated as state agencies under California
7 law” dates back to California’s Constitution, which mandates that the state legislature provide a
8 system of public schools. *See id.* at 253. *See also Stoner v. Santa Clara County Office of Educ.*,
9 502 F.3d 1116, 1123 (9th Cir. 2007) (Ninth Circuit consistently has “held that California school
10 districts and county offices of education are entitled to the state’s Eleventh Amendment
11 immunity, due in part to their statutorily mandated relationship with the state, which (among
12 other things) makes the state treasury unconditionally liable to make up any budgetary shortfall
13 encountered by either entity as a result of an adverse judgment.”).³

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17 It is undisputed that Alum Rock is a California public school district, *see* Complaint ¶ 2,
18 and thus under *Belanger* is a state agency or “arm of the state.” While Plaintiff contends that a
19 different analysis should be applied in light of USERRA’s broad policy of protecting the rights of
20 service men and women, there is no state or federal authority supporting the assertion that Alum
21 Rock is not a state entity. *See Velasquez*, 165 F.3d at 593; *Valadez*, 2005 WL 1541086, at *3.
22 Accordingly, the Court concludes that it lacks subject matter jurisdiction over Plaintiff’s
23 USERRA claims against Alum Rock.
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27 ³ During oral argument, Plaintiff asserted that this rule shielded California school districts
28 from USERRA litigation, in contravention of Congressional intent and the Supremacy Clause of
the Constitution. However, the judicial rule that California school districts are state agencies is
longstanding and predates USERRA, negating Plaintiff’s argument.

1 B. Guizar-Maita

2 Guizar-Maita separately argues that she cannot be held liable under USERRA for her
 3 alleged actions. The Court agrees. USERRA is directed at employers or “those individuals that
 4 have the power to hire or fire employees.” *Brooks v. Fiore*, No. 00-803, 2002 WL 1218448, at
 5 *9 n.3 (D. Del. Oct. 11, 2001). *See also* 38 U.S.C. § 4303(A)(i) (“‘employer’ means any person,
 6 institution, organization, or other entity that pays salary or wages for work performed or that has
 7 control over employment opportunities”). Alum Rock, not Guizar-Maita, was Plaintiff’s
 8 employer. There is no evidence that Guizar-Maita had any discretion to hire or terminate
 9 Plaintiff. To the extent that Plaintiff could amend his complaint to allege that Guizar-Maita had
 10 such authority, the same Eleventh Amendment analysis set forth above would apply. *See* 2008
 11 WL 4093608, at *5.

12 **III. CONCLUSION**

13 For the foregoing reasons, the Court finds that it lacks subject matter jurisdiction over
 14 Plaintiff’s USERRA claims. Because the USERRA claim must be brought in state court in any
 15 event, the Court declines to exercise supplemental jurisdiction over Plaintiff’s state law claims.
 16 *See* 28 U.S.C. § 1367(c).

17 Accordingly, IT IS HEREBY ORDERED that Defendants’ motion is GRANTED, and
 18 the above-entitled action is dismissed for lack of subject matter jurisdiction.

19 DATED: September 26, 2008

20 
 21 JEREMY FOGEL
 22 United States District Court

1 This Order has been served upon the following persons:

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